



FORECLOSURE FAIRNESS PROGRAM ELIGIBILITY CRITERIA & GUIDANCE FOR REFERRALS TO MEDIATION

Homeowners (borrowers) can only be referred to the Department of Commerce (Commerce) for foreclosure mediation by a housing counselor or an attorney. Each referring attorney and housing counselor has the responsibility to carefully review the circumstances of the borrower(s) and confirm eligibility for mediation prior to referral to Commerce.

ELIGIBILITY CHECKLIST

- ☐ **Owner Occupancy:** The Foreclosure Fairness Act (FFA) ([RCW 61.24.163](#)) applies only to owner-occupied residential properties. Owner-occupied means property that is the principal residence of the borrower. The property must have been owner-occupied as of the date when the initial contact under [RCW 61.24.031](#) was made.
 - ☐ **Beneficiary's Exempt Status:** The FFA allows federally insured depository institutions that do not have more than 250 trustee sales of owner-occupied residential properties in the previous year to file for exempt status each January. Exempt status is effective for all referrals for mediation that are received within the same calendar year that the exemption is effective. Exempt status for the current year has no effect on referrals received in the previous year. To determine the exempt status of the beneficiary, visit our website at www.commerce.wa.gov/foreclosures.
 - ☐ **Foreclosure Status:** The FFA recognizes a borrower's eligibility for mediation based on the following:
 - Borrowers that received a Notice of Default prior to July 22, 2011, may be referred to mediation up to one day prior to the date of the Trustee's Sale.
 - Borrowers that received a Notice of Default after July 22, 2011, are eligible for referral to mediation until 20 days after the recording date of a Notice of Trustee Sale.
 - ☐ **Trustee Contact Information Required:** Commerce is required by statute to notify the current Trustee that a referral for mediation has been received. A referral will not be processed until the Trustee information (name, address, etc.) is provided on the referral form. Typically, the Trustee's name is a matter of public record that can also be found on the correspondence received by the borrower.
- NOTE:** In order for Commerce to notify the Trustee prior to a Friday foreclosure sale, Commerce must receive the referral with complete information by noon on the Thursday before the sale. The earlier Commerce receives the referral, the better chance of notifying the Trustee before the sale occurs. Note, however, that Commerce has no control over a Trustee's decision to postpone a sale.
- ☐ **Dates of All Notifications:** Referrers must include ALL of the most recent notification dates that apply to the subject property. These include: Notice of Pre-Foreclosure Options, Notice of Default, Recording of the Notice of Trustee Sale, and Trustee Sale.

- ☐ **Referrals During Bankruptcy:** If the borrower is in bankruptcy, Commerce will accept referrals if one of the following items accompanies the referral:

- (1) Evidence of a relief from the stay; **OR**
- (2) A consent letter from the debtor (borrower(s) on the mortgage note) to the beneficiary pursuant to RULE 4001-2 (Federal Rules of Bankruptcy Procedure) meeting the following criteria:
 - letter is in writing;
 - letter is signed by either the debtor or their attorney;
 - letter identifies beneficiary on the deed of trust;
 - letter contains words to the effect that the debtor consents to the beneficiary participating in mediation under the FFA; and
 - letter contains words to the effect that mediation is for purposes of negotiation of a modification of the debt secured by the deed of trust.

OTHER REQUIREMENTS FOR REFERRERS

- ☐ **Complete Referrals:** Referring attorney or housing counselors must ensure that they provide Commerce with a complete and accurate referral. The referral form (provided by Commerce at www.commerce.wa.gov/foreclosures) needs to be completely filled out. Commerce will assign a mediator within 10 days ONLY after receiving a complete referral. Incomplete or incorrect referrals will NOT be processed and assigned to a mediator.
- ☐ **Signature Requirements:** In order to ensure the validity of a referral for mediation, Commerce requires the signature of the referring counselor or attorney on the referral form. The form can be hand-signed, scanned, and then either e-mailed or faxed to us. Mailing the signed original hardcopy is no longer required.
- ☐ **Borrower's Copy of the Referral:** The statute requires the referring attorney or housing counselor to send a copy of the referral to the borrower(s) ([RCW 61.24.163\(2\)](#)).

SUBMITTING THE REFERRALS

Commerce prefers that referring counselors and attorneys send the scanned hand-signed referrals electronically to foreclosuremediation@commerce.wa.gov. They can also be faxed to (360) 586-0966 – the referrer should follow up with a phone call to ensure that our staff received the faxed referral. Mailing a hard copy of the referral is no longer required.

Please note that Commerce is closed on Fridays, due to a 4-day/10-hour work schedule.